

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 481 (SS) OF 2003

CIVIL SIDE

Mohd. Saleem

..... PETITIONER

Versus

Chief Development Officer, Almora &
Others

..... RESPONDENTS

Hon'ble Rajesh Tandon J.

The present writ petition has been filed challenging the order dated 30.5.2003, transferring the petition, from Hawalbagh to Bhaisiyachan.

Heard Sri S.S. Yadav for the petitioner and the learned Standing Counsel for the respondents.

The grievance of the petitioner is that the petitioner was initially working in Vikaskhand Bhikyasain and on 17.10.98 he was transferred to Hawalbagh Vikaskhand, Almora. Again he was transferred on 7.6.1999 from Vikash Khand Havalbagh to the office of respondent no.2 i.e. District Development Office.

It was stated by the petitioner in paragraph 5 of the writ petition that on 4.12.1999 the charge of Senior Clerk was taken from

the petitioner. The petitioner has argued that he has filed a writ petition bearing No. 155 of 2001 in the High Court regarding his promotion which is still pending in the High Court. Further on 30.6.2003 he has been transferred from Vikas Khand, Havalbagh to Vikas Khand, Bhikiyasain, with a view to harass him.

So far as the transfer of the petitioner is concerned no interference can be made under Article 226 of the Constitution of India. In view of the settled preposition of law that the transfer is an exigency of service.

However option for the petitioner to approach the higher authorities is available. It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others* AIR 1991 SC 532 as under:

“In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.”

However, in the instant case the petitioner has stated that he has already made a representation that his transfer is mala fide one and was made with the collusion of District Development Officer, Considering the facts and circumstances of the case, and relying upon the observations of the Apex Court in the case of Shilpi Bose (supra), the petitioner may approach the higher authorities in the department. The petitioner, therefore, is directed to approach the authorities and in case he files a representation within two weeks after receipt of certified copy of this order, it shall be considered by respondent no.1 within a period of one month.

With aforesaid observations the writ petition is disposed of.

(Rajesh Tandon J.)

25.7.2003
Dhyani